UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

IN RE:

CHAYA SHEINER,

DEBTOR.

CHAPTER 13

CASE NO. 16-23271

JUDGE: Robert D. Drain

OBJECTION OF NATIONSTAR MORTGAGE LLC TO DEBTOR'S MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 506(A) AND 506(D) DETERMINING THE AMOUNT OF SECURED CLAIM # 2 OF NATIONSTAR MORTGAGE LLC

Nationstar Mortgage LLC ("Nationstar"), by and through its attorneys, Shapiro, DiCaro & Barak, LLC, as and for its Objection to Debtor's Motion for an Order Pursuant to 11 U.S.C. §§ 506(a) and 506(d) Determining the Amount of Secured Claim # 2 of Nationstar Mortgage LLC, dated December 12, 2016 (the "Motion") respectfully states:

1. On September 20, 2016, Chaya Sheiner (the "Debtor") filed a Voluntary Petition in this Bankruptcy Case under Chapter 13 of the Bankruptcy Code.

2. Nationstar holds a mortgage (the "Loan") on the Debtor's real property known as 43 Commerce Street, Spring Valley, NY 10977 (the "Property").

3. On October 2, 2016, the Debtor filed a proposed plan of reorganization that provided 36 plan payments in the amount of $150.00 per month and included no payments to Nationstar with respect to the Loan.

4. On October 14, 2016, Nationstar filed an objection to confirmation, which requested that the proposed plan be denied because it fails to comply with the provisions of 11 U.S.C. § 1325(a)(5)(B)(ii).

5. On November 22, 2016, Nationstar filed a proof of claim evidencing a total claim of $367,473.20, and including pre-petition arrears in the amount of $114,812.74.

6. On December 12, 2016, the Debtor filed the instant Motion seeking to value Nationstar's secured claim pursuant to 11 U.S.C. Sections 506(a) and 506(d).

DISCUSSION

7. The Debtor's Motion seeks to cram down Nationstar's secured lien into a secured portion at the value of the property, which the Debtor asserts is a mere $73,000.00, and an unsecured portion for the remaining balance of Nationstar's lien.

8. Nationstar challenges the Debtor's valuation of the property, as it is supported by a questionable valuation which reduces the value of the Property by well over two hundred thousand dollars for unspecified "repairs."

9. Additionally, the Debtor's proposed plan pays a mere $150.00 per month, resulting in a total estate of only $5,400.00 over the 36 months of the plan before trustee fees.

10. Regardless of which valuation the Court decides upon, the Debtor's proposed plan is utterly incapable of paying the full amount of the secured portion of Nationstar's claim, plus interest, over the life of the plan.

Valuation

11. The Debtor's Motion values the Property at $73,000.00 pursuant to a Summary Appraisal attached to the Motion as Exhibit B (the "Debtor's Summary Appraisal").

12. Nationstar has completed its own valuation of the Property which values the Property at $332,000.00 (the "Nationstar Valuation"). A copy of the Nationstar Valuation is annexed hereto as **Exhibit "A"**.

13. There is a huge disparity between the Debtor's valuation and Nationstar's valuation, totaling $259,000.00. The Debtor's valuation is less than 1/4 the value of Nationstar's valuation.

14. The seeming cause of the incredibly large discrepancy between the Debtor's Summary Appraisal and Nationstar's Valuation seems to be the inclusion of very significant repairs required to the property.

15. The Debtor's Summary Appraisal indicates that there are damages to the property in the amount of $225,000, a figure that appears to be wholly unsupported, other than a generic line about mold and termite damage and several low resolution photographs without any accompanying explanation.

16. Even more confusing, the Debtor's Summary Appraisal provides a reduction to all of the comparable sales that is significantly in excess of the estimated repairs, ranging from about $260,000 to nearly $290,000. This reduction is referred to as an "Adjustment" in the Debtor's Summary Appraisal.

17. The five comparables listed in the Debtor's Summary Appraisal were valued as follows:

a. Sold for: $340,100.00. The Debtor's Summary Appraisal provided an "Adjusted" value of $81,000.00, a reduction of $259,100.00.

b. Sold for: $347,000.00. The Debtor's Summary Appraisal provided an "Adjusted" value of $75,000.00, a reduction of $272,000.00.

c. Sold for: $349,366.00. The Debtor's Summary Appraisal provided an "Adjusted" value of $70,000.00, a reduction of $279,366.00.

d. Sold for: $361,000.00. The Debtor's Summary Appraisal provided an "Adjusted" value of $72,000.00, a reduction of $289,000.00.

e. Sold for: $366,500.00. The Debtor's Summary Appraisal provided an "Adjusted" value of $77,000.00, a reduction of $289,500.00.

18. The Debtor's Summary Appraisal provides no justification for the excessively large repair estimation of $225,000.00.

19. The Debtor's Summary Appraisal provides no methodology for how these large "adjustment" values were determined.

20. The Debtor's Summary Appraisal provides no justification for why the reduction of the comparable sales exceeds the estimated damages by as much as $65,000.00.

21. Nationstar requests the opportunity and access to the property to have an independent appraisal completed.

Feasibility

22. Regardless of the Court's determination of the value of the property, the Debtor's Plan is not feasible.

23. Section 1325 sets forth the requirements for chapter 13 plan confirmation. One of the provisions, Section 1325(a)(5), provides three options for dealing with a secured claim. The plan can provide for surrender of the collateral that secures the claim, provide a treatment the creditor will accept, or pay the claim in an amount "not less than the allowed amount of such claim." *In re Wimmer*, 512 B.R. 498, 509 (Bankr. S.D.N.Y. 2014); *In re Morales*, 506 B.R. 213, 217–18 (Bankr. S.D.N.Y. 2014) (citing *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 956–57 (1997)). The "allowed amount of such claim" under § 1325(a)(5)(B) is defined with reference to § 506(a). *In re Wimmer*, 512 B.R. 498, 509 (Bankr. S.D.N.Y. 2014).

24. By utilizing Section 506(a) and Section 1325(a)(5)(B), the Debtor is permitted to keep the property over the objection of Nationstar, but the Nationstar retains the lien securing the claim, and the debtor must provide the creditor with payments, over the life of the plan, that will

total the present value of the Nationstar's claim, i.e., the present value of the collateral. *See Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 957 (1997).

25. Section 506(a) provides, in pertinent part, that "an allowed claim of a creditor secured by a lien on property . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a)(1).

26. In the instant case, the Debtor's plan is clearly unable to pay Nationstar's secured claim regardless of which proposed valuation is used.

27. In *In re Koper*, 284 B.R. 747, 756 (Bankr. D. Conn. 2002), the court found that a plan that did not pay the balance of bifurcated mortgage claims in full during the plan had "no license under the Bankruptcy Code." The court noted that "[a] secured claim that is modified by a plan is plainly 'provided for' by that plan, as contemplated by section 1325(a)(5). Consequently, in order for such a plan to be confirmed, it must provide for payment thereunder of the present value of any such modified secured claim." *In re Wimmer*, 512 B.R. 498, 509 (Bankr. S.D.N.Y. 2014) (citing *In re Tavella*, 191 B.R. 637 (Bankr. E.D. Pa. 1996)).

28. Once a valuation of the property is determined, and a secured claim is bifurcated pursuant to Sections 506(a) and 506(d), if the Debtor wants to retain property secured by a secured claim, Section 1325 requires that the secured portion of the claim be paid in full through the Debtor's plan.

29. When a chapter 13 debtor retains property subject to a secured claim, the creditor retains its lien, and the debtor must provide installment payments through the plan that pay the secured portion of the creditor's lien in full, plus interest. *See In re Martinez*, 409 B.R. 35, 40

(Bankr. S.D.N.Y. 2009) (quoting *Assoc. Commercial Corp. v. Rash*, 520 U.S. 953, 957 (1997) and *Till v. SCS Credit Corp.*, 541 U.S. 465, 466, 468, 473 (2004)).

30. For the Debtor to successfully cram down Nationstar's lien, the secured portion of Nationstar's lien would therefore need to be paid in full through a confirmed plan, plus interest.

31. The Debtor's proposed plan provides for no such payments to Nationstar.

32. Even using the Debtor's valuation of the property, the Debtor's Plan would need to include payments to Nationstar in the amount of $73,000.00 plus interest over the 36 month life of the plan.

33. The Debtor's proposed plan pays a mere $150.00 per month, resulting in a total estate of only $5,400.00 over the 36 months of the plan.

34. Even if there were no other claims or expenses, the Debtor's disposable income is insufficient to confirm a plan that pays Nationstar's secured claim in full regardless of which valuation is ultimately decided to be correct.

CONCLUSION

35. Nationstar contends that the Debtor's valuation drastically underrepresents the value of the property.

36. Even if Nationstar's lien is bifurcated, the Debtor is clearly unable to propose a plan of reorganization that pays the secured portion of Nationstar's claim plus interest over the life of the plan, and so the Debtor's request to bifurcate Nationstar's claim should be denied.

WHEREFORE, Nationstar respectfully requests that the Court deny the Debtor's proposed order; or for such other relief as this court may deem just and proper.

Dated: February 24, 2017
Melville, New York

Respectfully submitted,

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